

107TH CONGRESS
1ST SESSION

S. 1850

To amend the Solid Waste Disposal Act to bring underground storage tanks into compliance with subtitle I of that Act, to promote cleanup of leaking underground storage tanks, to provide sufficient resources for such compliance and cleanup, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 19 (legislative day, DECEMBER 18), 2001

Mr. CHAFEE (for himself, Mr. CARPER, Mr. SMITH of New Hampshire, Mr. JEFFORDS, and Mr. INHOFE) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Solid Waste Disposal Act to bring underground storage tanks into compliance with subtitle I of that Act, to promote cleanup of leaking underground storage tanks, to provide sufficient resources for such compliance and cleanup, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Underground Storage
5 Tank Compliance Act of 2001”.

1 **SEC. 2. LEAKING UNDERGROUND STORAGE TANKS.**

2 Section 9004 of the Solid Waste Disposal Act (42
3 U.S.C. 6991c) is amended by adding at the end the fol-
4 lowing:

5 “(f) TRUST FUND DISTRIBUTION.—

6 “(1) IN GENERAL.—

7 “(A) AMOUNT AND PERMITTED USES OF
8 DISTRIBUTION.—The Administrator shall dis-
9 tribute to States not less than 80 percent of the
10 funds from the Trust Fund that are made
11 available to the Administrator under section
12 9013(2)(A) for each fiscal year for use in pay-
13 ing the reasonable costs, incurred under a coop-
14 erative agreement with any State, of—

15 “(i) actions taken by the State under
16 section 9003(h)(7)(A);

17 “(ii) necessary administrative ex-
18 penses, as determined by the Adminis-
19 trator, that are directly related to correc-
20 tive action and compensation programs
21 under subsection (c)(1);

22 “(iii) any corrective action and com-
23 pensation program carried out under sub-
24 section (c)(1) for a release from an under-
25 ground storage tank regulated under this
26 subtitle to the extent that, as determined

1 by the State in accordance with guidelines
2 developed jointly by the Administrator and
3 the State, the financial resources of the
4 owner or operator of the underground stor-
5 age tank (including resources provided by
6 a program in accordance with subsection
7 (c)(1)) are not adequate to pay the cost of
8 a corrective action without significantly im-
9 pairing the ability of the owner or operator
10 to continue in business;

11 “(iv) enforcement by the State or a
12 local government of—

13 “(I) the State program approved
14 under this section; or

15 “(II) State or local requirements
16 concerning underground storage tanks
17 that are similar or identical to the re-
18 quirements of this subtitle; or

19 “(v) State or local corrective actions
20 carried out under regulations promulgated
21 under section 9003(c)(4).

22 “(B) USE OF FUNDS FOR ENFORCE-
23 MENT.—In addition to the uses of funds au-
24 thorized under subparagraph (A), the Adminis-
25 trator may use funds from the Trust Fund that

1 are not distributed to States under subpara-
2 graph (A) for enforcement of any regulation
3 promulgated by the Administrator under this
4 subtitle.

5 “(C) PROHIBITED USES.—Except as pro-
6 vided in subparagraph (A)(iii), under any simi-
7 lar requirement of a State program approved
8 under this section, or in any similar State or
9 local provision as determined by the Adminis-
10 trator, funds provided to a State by the Admin-
11 istrator under subparagraph (A) shall not be
12 used by the State to provide financial assistance
13 to an owner or operator to meet any require-
14 ment relating to underground storage tanks
15 under part 280 of title 40, Code of Federal
16 Regulations (as in effect on the date of enact-
17 ment of this subsection).

18 “(2) ALLOCATION.—

19 “(A) PROCESS.—Subject to subparagraph
20 (B), in the case of a State with which the Ad-
21 ministrator has entered into a cooperative
22 agreement under section 9003(h)(7)(A), the
23 Administrator shall distribute funds from the
24 Trust Fund to the State using the allocation

1 process developed by the Administrator under
2 the cooperative agreement.

3 “(B) REVISIONS TO PROCESS.—The Ad-
4 ministrator may revise the allocation process re-
5 ferred to in subparagraph (A) with respect to a
6 State only after—

7 “(i) consulting with—

8 “(I) State agencies responsible
9 for overseeing corrective action for re-
10 leases from underground storage
11 tanks;

12 “(II) owners; and

13 “(III) operators; and

14 “(ii) taking into consideration, at a
15 minimum—

16 “(I) the total tax revenue con-
17 tributed to the Trust Fund from all
18 sources within the State;

19 “(II) the number of confirmed
20 releases from leaking underground
21 storage tanks in the State;

22 “(III) the number of petroleum
23 storage tanks in the State;

1 “(IV) the percentage of the popu-
 2 lation of the State that uses ground-
 3 water for any beneficial purpose;

4 “(V) the performance of the
 5 State in implementing and enforcing
 6 the program;

7 “(VI) the financial needs of the
 8 State; and

9 “(VII) the ability of the State to
 10 use the funds referred to in subpara-
 11 graph (A) in any year.

12 “(3) DISTRIBUTIONS TO STATE AGENCIES.—

13 “(A) IN GENERAL.—Distributions from the
 14 Trust Fund under this subsection shall be made
 15 directly to a State agency that—

16 “(i) enters into a cooperative agree-
 17 ment referred to in paragraph (2)(A); or

18 “(ii) is enforcing a State program ap-
 19 proved under this section.

20 “(B) ADMINISTRATIVE EXPENSES.—A
 21 State agency that receives funds under this sub-
 22 section shall limit the proportion of those funds
 23 that are used to pay administrative expenses to
 24 such percentage as the State may establish by
 25 law.

1 “(4) **COST RECOVERY PROHIBITION.**—Funds
 2 from the Trust Fund provided by States to owners
 3 or operators for programs under subsection (c)(1)
 4 relating to releases from underground storage tanks
 5 shall not be subject to cost recovery by the Adminis-
 6 trator under section 9003(h)(6).”.

7 **SEC. 3. INSPECTION OF UNDERGROUND STORAGE TANKS.**

8 Section 9005 of the Solid Waste Disposal Act (42
 9 U.S.C. 6991d) is amended—

10 (1) by redesignating subsections (a) and (b) as
 11 subsections (b) and (c), respectively; and

12 (2) by inserting before subsection (b) (as redes-
 13 ignated by paragraph (1)) the following:

14 “(a) **INSPECTION REQUIREMENTS.**—Not later than 2
 15 years after the date of enactment of the Underground
 16 Storage Tank Compliance Act of 2001, and at least once
 17 every 2 years thereafter, the Administrator or a State with
 18 a program approved under section 9004, as appropriate,
 19 shall require that all underground storage tanks regulated
 20 under this subtitle be inspected for compliance with regu-
 21 lations promulgated under section 9003(c).”.

22 **SEC. 4. OPERATOR TRAINING.**

23 Subtitle I of the Solid Waste Disposal Act (42 U.S.C.
 24 6991 et seq.) is amended by striking section 9010 and
 25 inserting the following:

1 **“SEC. 9010. OPERATOR TRAINING.**

2 “(a) GUIDELINES.—

3 “(1) IN GENERAL.—Not later than 18 months
4 after the date of enactment of the Underground
5 Storage Tank Compliance Act of 2001, in coopera-
6 tion with States, owners, and operators, the Admin-
7 istrator shall publish in the Federal Register, after
8 public notice and opportunity for comment, guide-
9 lines that specify methods for training operators of
10 underground storage tanks.

11 “(2) CONSIDERATIONS.—The guidelines de-
12 scribed in paragraph (1) shall take into account—

13 “(A) State training programs in existence
14 as of the date of publication of the guidelines;

15 “(B) training programs that are being em-
16 ployed by owners and operators as of the date
17 of enactment of this paragraph;

18 “(C) the high turnover rate of operators;

19 “(D) the frequency of improvement in un-
20 derground storage tank equipment technology;

21 “(E) the nature of the businesses in which
22 the operators are engaged; and

23 “(F) such other factors as the Adminis-
24 trator determines to be necessary to carry out
25 this section.

26 “(b) STATE PROGRAMS.—

1 “(1) IN GENERAL.—Not later than 2 years
 2 after the date on which the Administrator publishes
 3 the guidelines under subsection (a)(1), each State
 4 shall develop and implement a strategy for the train-
 5 ing of operators of underground storage tanks that
 6 is consistent with paragraph (2).

7 “(2) REQUIREMENTS.—A State strategy de-
 8 scribed in paragraph (1) shall—

9 “(A) be consistent with subsection (a);

10 “(B) be developed in cooperation with own-
 11 ers and operators; and

12 “(C) take into consideration training pro-
 13 grams implemented by owners and operators as
 14 of the date of enactment of this subsection.

15 “(3) FINANCIAL INCENTIVE.—The Adminis-
 16 trator may award to a State that develops and im-
 17 plements a strategy described in paragraph (1), in
 18 addition to any funds that the State is entitled to
 19 receive under this subtitle, not more than \$50,000,
 20 to be used to carry out the strategy.”.

21 **SEC. 5. REMEDIATION OF MTBE CONTAMINATION.**

22 Section 9003(h) of the Solid Waste Disposal Act (42
 23 U.S.C. 6991b(h)) is amended—

24 (1) in paragraph (7)(A)—

1 (A) by striking “paragraphs (1) and (2) of
 2 this subsection” and inserting “paragraphs (1),
 3 (2), and (12)”;

4 (B) by striking “, and including the au-
 5 thorities of paragraphs (4), (6), and (8) of this
 6 subsection” and inserting “and the authority
 7 under section 9011 and paragraphs (4), (6),
 8 and (8),”; and
 9 (2) by adding at the end the following:

10 “(12) REMEDIATION OF MTBE CONTAMINA-
 11 TION.—

12 “(A) IN GENERAL.—The Administrator
 13 and the States may use funds made available
 14 under section 9013(2)(B) to carry out correc-
 15 tive actions with respect to a release of methyl
 16 tertiary butyl ether that presents a threat to
 17 human health or welfare or the environment.

18 “(B) APPLICABLE AUTHORITY.—The Ad-
 19 ministrator or a State shall carry out subpara-
 20 graph (A)—

21 “(i) in accordance with paragraph (2);

22 and

23 “(ii) in the case of a State, in accord-
 24 ance with a cooperative agreement entered

1 into by the Administrator and the State
2 under paragraph (7).”.

3 **SEC. 6. RELEASE PREVENTION, COMPLIANCE, AND EN-**
4 **FORCEMENT.**

5 (a) RELEASE PREVENTION AND COMPLIANCE.—Sub-
6 title I of the Solid Waste Disposal Act (42 U.S.C. 6991
7 et seq.) (as amended by section 4) is amended by adding
8 at the end the following:

9 **“SEC. 9011. RELEASE PREVENTION AND COMPLIANCE.**

10 “Funds made available under section 9013(2)(D)
11 from the Trust Fund may be used to conduct inspections,
12 issue orders, or bring actions under this subtitle—

13 “(1) by a State, in accordance with section
14 9003(h)(7), acting under—

15 “(A) a program approved under section
16 9004; or

17 “(B) any State requirement concerning the
18 regulation of underground storage tanks that is
19 similar or identical to a requirement under this
20 subtitle, as determined by the Administrator;
21 and

22 “(2) by the Administrator, under this subtitle
23 (including under a State program approved under
24 section 9004).”.

1 (b) GOVERNMENT-OWNED TANKS.—Section 9003 of
 2 the Solid Waste Disposal Act (42 U.S.C. 6991b) is amend-
 3 ed by adding at the end the following:

4 “(i) GOVERNMENT-OWNED TANKS.—

5 “(1) COMPLIANCE STRATEGY.—Not later than
 6 2 years after the date of enactment of this sub-
 7 section, each State shall submit to the Administrator
 8 a strategy to ensure compliance with regulations
 9 promulgated under subsection (c) of any under-
 10 ground storage tank that is—

11 “(A) regulated under this subtitle; and

12 “(B) owned or operated by the State gov-
 13 ernment or any local government.

14 “(2) FINANCIAL INCENTIVE.—The Adminis-
 15 trator may award to a State that develops and im-
 16 plements a strategy described in paragraph (1), in
 17 addition to any funds that the State is entitled to
 18 receive under this subtitle, not more than \$50,000,
 19 to be used to carry out the strategy.”.

20 (c) INCENTIVES FOR PERFORMANCE.—Section 9006
 21 of the Solid Waste Disposal Act (42 U.S.C. 6991e) is
 22 amended by adding at the end the following:

23 “(e) INCENTIVES FOR PERFORMANCE.—In deter-
 24 mining the terms of, or whether to issue, a compliance
 25 order under subsection (a), or the amount of, or whether

1 to impose, a civil penalty under subsection (d), the Admin-
 2 istrator, or a State under a program approved under sec-
 3 tion 9004, shall take into consideration whether an owner
 4 or operator has—

5 “(1) a history of operating underground storage
 6 tanks of the owner or operator in accordance with—

7 “(A) this subtitle; or

8 “(B) a State program approved under sec-
 9 tion 9004; or

10 “(2) implemented a program, consistent with
 11 guidelines published under section 9010, that pro-
 12 vides training to persons responsible for operating
 13 any underground storage tank of the owner or oper-
 14 ator.”.

15 (d) AUTHORITY TO PROHIBIT CERTAIN DELIV-
 16 ERIES.—Section 9006 of the Solid Waste Disposal Act (42
 17 U.S.C. 6991e) (as amended by subsection (c)) is amended
 18 by adding at the end the following:

19 “(f) AUTHORITY TO PROHIBIT CERTAIN DELIV-
 20 ERIES.—

21 “(1) IN GENERAL.—After the date on which the
 22 Administrator promulgates regulations under para-
 23 graph (2), the Administrator, or a State with a pro-
 24 gram approved under section 9004, may prohibit the

1 delivery of regulated substances to underground
 2 storage tanks that are not in compliance with—

3 “(A) a requirement or standard promul-
 4 gated by the Administrator under section 9003;
 5 or

6 “(B) a requirement or standard of a State
 7 program approved under section 9004.

8 “(2) AUTHORITY.—Not later than 2 years after
 9 the date of enactment of this subsection, the Admin-
 10 istrator, after consultation with States, shall promul-
 11 gate regulations that specify—

12 “(A) the circumstances under which the
 13 authority provided by paragraph (1) may be
 14 used;

15 “(B) the process by which the authority
 16 provided by paragraph (1) will be used consist-
 17 ently and fairly; and

18 “(C) such other factors as the Adminis-
 19 trator, in cooperation with States, determines to
 20 be necessary to carry out this subsection.”.

21 (e) PUBLIC RECORD.—Section 9002 of the Solid
 22 Waste Disposal Act (42 U.S.C. 6991a) is amended by add-
 23 ing at the end the following:

24 “(d) PUBLIC RECORD.—

1 “(1) IN GENERAL.—The Administrator shall re-
2 quire each State and Indian tribe that receives funds
3 under this subtitle to maintain, update at least an-
4 nually, and make available to the public, in such
5 manner and form as the Administrator shall pre-
6 scribe (after consultation with States and Indian
7 tribes), a record of underground storage tanks regu-
8 lated under this subtitle.

9 “(2) CONSIDERATIONS.—To the maximum ex-
10 tent practicable, the public record of a State or In-
11 dian tribe, respectively, shall include, for each
12 year—

13 “(A) the number, sources, and causes of
14 underground storage tank releases in the State
15 or on tribal land;

16 “(B) the record of compliance by under-
17 ground storage tanks in the State or on tribal
18 land with—

19 “(i) this subtitle; or

20 “(ii) an applicable State program ap-
21 proved under section 9004; and

22 “(C) data on the number of underground
23 storage tank equipment failures in the State or
24 on tribal land.

1 “(3) AVAILABILITY.—The Administrator shall
2 make the public record of each State and Indian
3 tribe under this section available to the public elec-
4 tronically.”.

5 **SEC. 7. FEDERAL FACILITIES.**

6 Section 9007 of the Solid Waste Disposal Act (42
7 U.S.C. 6991f) is amended by adding at the end the fol-
8 lowing:

9 “(c) REVIEW OF FEDERAL UNDERGROUND STORAGE
10 TANKS.—Not later than 1 year after the date of enact-
11 ment of this subsection, the Administrator, in cooperation
12 with each Federal agency that owns or operates 1 or more
13 underground storage tanks or that manages land on which
14 1 or more underground storage tanks are located, shall
15 review the status of compliance of those underground stor-
16 age tanks with this subtitle.

17 “(d) COMPLIANCE STRATEGIES.—Not later than 2
18 years after the date of enactment of this subsection, each
19 Federal agency described in subsection (c) shall submit
20 to the Administrator and to each State in which an under-
21 ground storage tank described in subsection (c) is located,
22 a strategy to ensure the compliance of those underground
23 storage tanks with this subtitle.”.

1 **SEC. 8. TANKS UNDER THE JURISDICTION OF INDIAN**
 2 **TRIBES.**

3 Subtitle I of the Solid Waste Disposal Act (42 U.S.C.
 4 6991 et seq.) is amended by inserting after section 9011
 5 (as added by section 6(a)) the following:

6 **“SEC. 9012. TANKS UNDER THE JURISDICTION OF INDIAN**
 7 **TRIBES.**

8 “The Administrator, in coordination with Indian
 9 tribes, shall—

10 “(1) not later than 1 year after the date of en-
 11 actment of this section, develop and implement a
 12 strategy—

13 “(A) giving priority to releases that
 14 present the greatest threat to human health or
 15 the environment, to take necessary corrective
 16 action in response to releases from leaking un-
 17 derground storage tanks located wholly within
 18 the boundaries of—

19 “(i) an Indian reservation; or

20 “(ii) any other area under the juris-
 21 diction of an Indian tribe; and

22 “(B) to implement and enforce require-
 23 ments concerning underground storage tanks
 24 located wholly within the boundaries of—

25 “(i) an Indian reservation; or

1 “(ii) any other area under the juris-
 2 diction of an Indian tribe; and

3 “(2) not later than 2 years after the date of en-
 4 actment of this section and every 2 years thereafter,
 5 submit to Congress a report that summarizes the
 6 status of implementation and enforcement of the
 7 leaking underground storage tank program in areas
 8 located wholly within—

9 “(A) the boundaries of Indian reservations;
 10 and

11 “(B) any other areas under the jurisdiction
 12 of an Indian tribe.”.

13 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

14 Subtitle I of the Solid Waste Disposal Act (42 U.S.C.
 15 6991 et seq.) (as amended by section 8) is amended by
 16 adding at the end the following:

17 **“SEC. 9013. AUTHORIZATION OF APPROPRIATIONS.**

18 “There are authorized to be appropriated to the
 19 Administrator—

20 “(1) to carry out subtitle I (except sections
 21 9003(h), 9005(a), and 9011) \$25,000,000 for each
 22 of fiscal years 2003 through 2007; and

23 “(2) from the Trust Fund, notwithstanding sec-
 24 tion 9508(c)(1) of the Internal Revenue Code of
 25 1986—

1 “(A) to carry out section 9003(h) (except
 2 section 9003(h)(12)) \$100,000,000 for each of
 3 fiscal years 2003 through 2007;

4 “(B) to carry out section 9003(h)(12),
 5 \$200,000,000 for fiscal year 2003, to remain
 6 available until expended;

7 “(C) to carry out section 9005(a)—

8 “(i) \$35,000,000 for each of fiscal
 9 years 2003 and 2004; and

10 “(ii) \$20,000,000 for each of fiscal
 11 years 2005 through 2008; and

12 “(D) to carry out section 9011—

13 “(i) \$50,000,000 for fiscal year 2003;

14 and

15 “(ii) \$30,000,000 for each of fiscal
 16 years 2004 through 2008.”.

17 **SEC. 10. CONFORMING AMENDMENTS.**

18 (a) IN GENERAL.—Section 9001 of the Solid Waste
 19 Disposal Act (42 U.S.C. 6991) is amended—

20 (1) by striking “For the purposes of this sub-
 21 title—” and inserting “In this subtitle:”;

22 (2) by redesignating paragraphs (1), (2), (3),
 23 (4), (5), (6), (7), and (8) as paragraphs (10), (7),
 24 (4), (3), (8), (5), (2), and (6), respectively;

(3) by inserting before paragraph (2) (as redesignated by paragraph (2)) the following:

“(1) INDIAN TRIBE.—The term ‘Indian tribe’ has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).”; and

(4) by inserting after paragraph (8) (as redesignated by paragraph (2)) the following:

“(9) TRUST FUND.—The term ‘Trust Fund’ means the Leaking Underground Storage Tank Trust Fund established by section 9508 of the Internal Revenue Code of 1986.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 9003(f) of the Solid Waste Disposal Act (42 U.S.C. 6991b(f)) is amended—

(A) in paragraph (1), by striking “9001(2)(B)” and inserting “9001(7)(B)”; and

(B) in paragraphs (2) and (3), by striking “9001(2)(A)” each place it appears and inserting “9001(7)(A)”.

(2) Section 9003(h) of the Solid Waste Disposal Act (42 U.S.C. 6991b(h)) is amended in paragraphs (1), (2)(C), (7)(A), and (11) by striking “Leaking Underground Storage Tank Trust Fund” each place it appears and inserting “Trust Fund”.

1 (3) Section 9009 of the Solid Waste Disposal
2 Act (42 U.S.C. 6991h) is amended—

3 (A) in subsection (a), by striking
4 “9001(2)(B)” and inserting “9001(7)(B)”; and
5 (B) in subsection (d), by striking “section
6 9001(1) (A) and (B)” and inserting “subpara-
7 graphs (A) and (B) of section 9001(10)”.

8 **SEC. 11. TECHNICAL AMENDMENTS.**

9 (a) Section 9001(4)(A) of the Solid Waste Disposal
10 Act (42 U.S.C. 6991(4)(A)) (as amended by section
11 9(a)(2)) is amended by striking “sustances” and inserting
12 “substances”.

13 (b) Section 9003(f)(1) of the Solid Waste Disposal
14 Act (42 U.S.C. 6991b(f)(1)) is amended by striking “sub-
15 section (c) and (d) of this section” and inserting “sub-
16 sections (c) and (d)”.

17 (c) Section 9004(a) of the Solid Waste Disposal Act
18 (42 U.S.C. 6991c(a)) is amended by striking “in 9001(2)
19 (A) or (B) or both” and inserting “in subparagraph (A)
20 or (B) of section 9001(7)”.

21 (d) Section 9005 of the Solid Waste Disposal Act (42
22 U.S.C. 6991d) (as amended by section 3) is amended—

23 (1) in subsection (b), by striking “study tak-
24 ing” and inserting “study, taking”;

- 1 (2) in subsection (c)(1), by striking “relevent”
2 and inserting “relevant”; and
3 (3) in subsection (c)(4), by striking
4 “Evironmental” and inserting “Environmental”.

○